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SUBJECT: ZAMBIA'S CONSTITUTIONAL CONFERENCE: THE LIGHT AT THE END OF THE TUNNEL MAY BE AN ONCOMING TRAIN

¶11. Summary. Zambia's National Constitutional Conference (NCC) continues to make progress toward a proposed draft constitution, and optimistically predicts it will have an approved draft by July of this year. Six of the NCC's 11 committees have met and forwarded their recommendations for consideration by the plenary, and the remaining five committees are scheduled to complete their work in February. As committee members know that their recommendations still have to be accepted by the 500-plus members of the plenary, however, they have pushed many of the most contentious issues to the larger body, leaving much of the NCC's hardest work remaining to be done. Given these hurdles, it is unlikely that the process will conclude by July as the GRZ has indicated. The constitution's path to enactment, and acceptance by the general public, remain uncertain. End summary.

¶12. Six of the NCC's committees have met and concluded their deliberations: the Citizenship, Judicial, and Public Service committees met from May 19 to June 16, 2008, and the Democratic Governance, Local Government, and Public Finance committees met from July 10 to August, 2008. Meetings for the five remaining committees - General Constitutional Principles, Human Rights, Executive, Legislative, and Land and Environment - commenced on January 12, 2009 and are scheduled to be completed in February.

¶13. The objectives of the committee meetings are to consider the contents of the Mung'omba Constitutional Review Commission's (CRC) recommendations and proposed draft constitution, and to provide recommendations to the NCC plenary as to what should be included in the new draft constitution. The committees will present their recommendations to the NCC's plenary session after March for further consideration and adoption. The plenary last met in April 2008 to approve committee membership.

¶14. Key recommendations that have been made so far include a "50-percent-plus-one" method for electing the president, recognition of dual citizenship (which is currently prohibited), and the public funding of political parties. There is also a recommendation to give the president the unilateral power to declare war. Many contentious issues remain for committee consideration, including the appointment of Cabinet ministers from outside Parliament, expanding the number of members of Parliament, and the inclusion of an economic, social and cultural bill of rights in the Constitution.

¶15. NCC spokesperson Mwangala Zaloumis held a press conference in January 2009 to explain the progress of the NCC. According to Zaloumis, the committees are due to complete their deliberations in February, in time for a plenary session to begin in April. Decisions by the plenary, which is comprised of some 520 members, are to be taken by consensus. When consensus cannot be reached (there is no timeline provided for reaching consensus), a two-thirds majority is required. According to Zaloumis, the plenary should approve a draft constitution by July. This draft would be published for public comment for 60 days, after which time the plenary would meet once again to produce a second draft based on public comments and contributions.

¶16. The NCC would then submit its final version of the Constitution to the Minister of Justice, who will either:

-- Present it to the National Assembly as a Bill of Parliament and enact a new Constitution, if the draft bill does not contain any provisions to amend Part III (essentially the Bill of Rights) or Article 79 of the Constitution (dealing with amendment to the Constitution); or

-- Take the necessary steps to convene a national referendum, as required if the draft bill contains provisions to alter Part III or Article 79 of the Constitution; or if the NCC itself resolves that the entire draft should be submitted to a national referendum.

¶7. Civil society groups not participating in the NCC, including prominent women's groups and church bodies, have expressed concern that the ruling Movement for Multiparty Democracy (MMD) will try to ram an unacceptable draft through the plenary and parliament, which are stacked with MMD loyalists. The groups have also expressed concern that the GRZ will use its influence to pressure the NCC into only making amendments to the constitution, rather than proposing a whole new draft as many civil society groups believe is necessary. For its part, the GRZ says that it is committed to leaving the NCC to its business without interference and that it will implement whatever is recommended.

¶8. Comment: The NCC's committee stage has gone relatively smoothly, in part because committee members know that their decisions are non-binding until decided in plenary. Notwithstanding civil society's concerns, the plenary's large size and requirement for consensus decision-making mean a significant slow-down of the process almost inevitable. The journey so far has been all on-ramp, and only with the plenary will the real traffic jams begin. Once out of plenary, how the government intends to secure enactment and acceptance of the new constitution, given the widespread perception that the NCC is stacked in favor of MMD perpetuation in government, remains to be seen. End comment.

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